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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/505,509	02/17/2000	Manish Gupta	YOR9-2000-0004	6746

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EXAMINER

FELTEN, DANIEL S

ART UNIT PAPER NUMBER

3624

DATE MAILED: 12/15/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/505,509

Applicant(s)

GUPTA ET AL.

Examiner

Daniel S Felten

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[Handwritten signature]

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on 17 February 2000.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-11 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-11 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. Receipt of the Amendment filed March 15, 2004 amending claims 1, 3, 6, 9 and adding claim 11 is acknowledged. Claims 1-11 are pending in the application and are presented to be examined upon their merits.

Response to Arguments

2. Applicant's arguments filed March 15, 2004 have been fully considered but they are not persuasive. It is clear that the applicant has belittled the cited reference by placing a more stringent standard to the reference than to the limitations of the claims. This a reversal of their appropriate roles as the reference is used as a whole as a teaching in light of the level of skill in the art. The applicant asserts that, in claim 1, that the figure that was pointed out by the Examiner fails to show a distributed processing system. The examiner disagrees with the applicant's assessment of the figure. In response to applicant's arguments, the recitation distributed processing system has not been given patentable weight because the recitation occurs in the preamble. A preamble is generally not accorded any patentable weight where it merely recites the purpose of a process or the intended use of a structure (i.e., "A distributed method *for* processing auction traffic....") and where the body of the claim does not depend on the preamble for completeness but, instead, the process steps or structural limitations are able to stand alone. See *In re Hirao*, 535 F.2d 67, 190 USPQ 15 (CCPA 1976) and *Kropa v. Robie*, 187 F.2d 150, 152, 88 USPQ 478, 481 (CCPA 1951).

Furthermore, the Examiner interprets the citation within Friedland et al that teaches that,

“The collector /re-distributor nodes are hierarchically interconnected and serve to efficiently collect and filter bids from a large number of remote bidders and pass potentially winning bids onto the auction server, and also serve to efficiently broadcast status messages concerning the live auction received from the auction server to a large number of remote client programs running on remote computers.”

Is compatible to “...using **one** or more servers at a plurality of nodes in a distributed processing system,” disclosed in applicant’s preamble, because the functional effect of the collector/re-distributor nodes-- to identify and filter out loser bids, while determining *potentially* (or candidate) winning bids over the Internet-- is the same process described within the limitations cited in the body of at least claim 1 (see also Friedland, col. 3, ll. 22+: and col. 16, ll. 37 to col. 17, ll 1+). It also is maintained that the Internet is a distributed processing network wherein bi-directional interactive transactions take place.

The examiner does agree with applicant that the Examiner should use the specification to define claim terms. But, it is also true that in interpreting claims, they be given their ***broadest reasonable interpretation*** consistent with the supporting description [see In re Hyatt, 211 F. 3d 1367, 1372, 54 USPQ2d 1664, 1667 (Fed. Cir. 2000). See also MPEP 2111]. It is also true that a claim must be interpreted in light of the specification **without** reading limitations into the claim [see In re Morris, 127 F. 3d 1048, 1054-58, 44 USPQ 2d 1023, 1027-28 (Fed. Cir. 1997)]. Thus the examiner maintains that interpretations based upon the cited prior art are considered reasonable in lieu of the applicant’s specification. Thus rejections from the previous office action are maintained based upon the what the cited prior art suggests as a whole to one of ordinary skill in the art.

Conclusion

3. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Daniel S Felten whose telephone number is (703) 305-0724. The examiner can normally be reached on Flex.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vincent Millin can be reached on (703) 308-1065. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Daniel S Felten
Examiner
Art Unit 3624

DSF
December 06, 2004



VINCENT MILLIN
SUPERVISORY PATENT EXAMINER
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